

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

FILED

04 NOV -5 AM 10:59

ELWOOD H. JONES JR.
PRO SE PETITIONER

MICHAEL R. MERZ
UNITED STATES
CASE NO. C-1-01-564 JUDGE

v.

JUDGE THOMAS M. ROSE

MARGARET BAGLEY /WARDEN
RESPONDENT

MAGISTRATE JUDGE MERZ

PETITIONER'S PRO SE REPLY TO RESPONDENT'S OPPOSITION
TO PETITIONER'S PRO SE SUPPLEMENTAL BRIEF

PETITIONER-ELWOOD H. JONES JR. NOW RESPECTFULLY MOVES TO REPLY, PRO SE, TO RESPONDENT'S AUGUST 12, 2004 MOTION TO OPPOSE PETITIONER'S PRO SE SUPPLEMENTAL BRIEF.

FIRST & FOREMOST, PETITIONER-JONES RESPECTFULLY INFORMS THIS HONORABLE COURT OF NOT ONLY RESPONDENT'S FAILURE TO FORWARD A COPY OF SAID MOTION TO OPPOSE PETITIONER'S PRO SE SUPPLEMENTAL BRIEF (OF WHICH RESPONDENT FALSELY STATED OCCURRED); BUT ALSO OF PETITIONER'S SAID APPOINTED COUNSEL'S (G. MEYERS AND J. OWEN) FAILURE TO FORWARD SUCH A COPY. RESPONDENT'S MOTION WAS FILED ON AUGUST 12, 2004; IT IS NOW OCTOBER 27, 2004, AND HAD PETITIONER NOT WROTE THE CLERK OF COURTS (JAMES BONINI) TO INQUIRE AS TO WHAT HAD BEEN FILED IN PETITIONER'S CASE AND THEREBY PAY FOR ANY SUCH COPIES, PETITIONER WOULD HAVE NEVER KNOWN OF SUCH MOTION FILED BY RESPONDENT. NOT ONLY DOES THIS FAILURE TO FORWARD RESPONDENT'S MOTION TO OPPOSE PETITIONER'S PRO SE SUPPLEMENTAL BRIEF DEMONSTRATE THE ONGOING INAPPROPRIATE & ABSOLUTE UNPROFESSIONAL CONDUCT AND LACK OF COMMUNICATION THEREFROM; BUT SUCH ALSO PLACES PETITIONER-JONES AT A MOST INAPT DISADVANTAGE WHEREIN RESPONDENT'S MOTION IN OPPOSITION IS OF PETITIONER-JONES' PRO SE SUPPLEMENTAL BRIEF. HOW CAN PETITIONER-JONES RIGHTFULLY RESPOND TO THAT WHICH HE HAS NOT BEEN INFORMED OF?

AS IT PERTAINS TO RESPONDENT'S MOTION TO OPPOSE PETITIONER'S PRO SE SUPPLEMENTAL BRIEF, PETITIONER-JONES RESPECTFULLY ASSERTS THE NECESSITY FOR CLARIFICATION OF WHAT RESPONDENT IS INTENTIONALLY OR UNINTENTIONALLY TRYING TO CONFUSE: IN A COMMUNICATION RECEIVED BY PETITIONER-JONES FROM THE COURT [ON JUNE 7, 2004] IN RESPONSE TO AN EARLIER COMMUNICATION, THE COURT INFORMED THAT IT ISSUED AN ORDER TO THE ATTORNEYS REQUIRING THEM TO ADVISE THE COURT WHAT

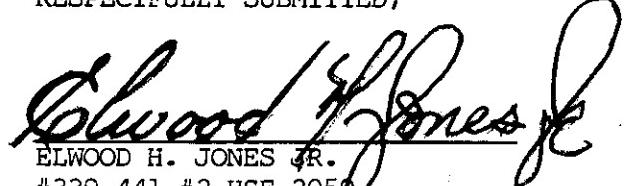
THE PROPER PROCEDURE SHOULD BE IN RESPONSE TO PETITIONER'S FEBRUARY 6, 2004 AFFIDAVIT AND TO FILE THEIR SUGGESTIONS NOT LATER THAN JULY 1, 2004. IN RESPONSE, PETITIONER-JONES WROTE THIS HONORABLE COURT ON JUNE 11, 2004 TO CLARIFY ANY AMBIGUITIES, AND TO FURTHERMORE DEMONSTRATE AND/OR EXPLAIN THE REASON FOR THE FEBRUARY 6, 2004 AFFIDAVIT. ON JUNE 18, 2004, THIS HONORABLE COURT REPLIED TO PETITIONER-JONES' LETTER OF JUNE 11, 2004, AND THEREIN STATED THAT IT UNDERSTOOD PETITIONER-JONES' POSITION, ETC., AND WAS INSTRUCTING COUNSEL (I.E., G. MEYERS & J. OWEN) TO CONSIDER THE MATTERS PETITIONER HAVE RAISED AND DETERMINE IF THEY CAN PROPERLY BE INCLUDED IN THE MOTION FOR EVIDENTIARY HEARING -- "WHICH THEY WILL FILE IN THE NEXT TWO WEEKS." THEREAFTER, PETITIONER'S APPOINTED COUNSEL & RESPONDENT GOT TOGETHER AND SUBMITTED TO THIS COURT MOTIONS FOR A HEARING CONCERNING THE DISPOSITION OF THE FEBRUARY 6, 2004 AFFIDAVIT. IN RESPONSE, AND FOR FURTHER CLARIFICATION OF PETITIONER'S WISHES & POSITION, PETITIONER-JONES SUBMITTED A PRO SE MOTION TO RESPONDENT'S & COUNSEL'S MOTION[S] CONCERNING THE DISPOSITION OF THE AFFIDAVIT OF FEBRUARY 6, 2004. PER PETITIONER-JONES' PRO SE MOTION IN RESPONSE TO RESPONDENT & APPOINTED COUNSEL'S MOTIONS REGARDING THE DISPOSITION OF THE SAID AFFIDAVIT, PETITIONER-JONES NOT ONLY SOUGHT TO FURTHER CLARIFY THE ISSUE AND/OR HIS POSITION, BUT PETITIONER-JONES ALSO RESPECTFULLY EXPRESSED HIS WISHES TO WITHDRAW THE SAID AFFIDAVIT OF FEBRUARY 6, 2004.

PETITIONER-JONES RESPECTFULLY ASSERTS THAT RESPONDENT IS APPARENTLY CONFUSED, OR INCOMPETENT AND THUS CONFUSING THAT WHICH IS BEFORE THIS HONORABLE COURT: ON JUNE 7, 2004 THIS HONORABLE COURT ISSUED AN ORDER TO THE ATTORNEYS TO FILE SUGGESTIONS NOT LATER THAN JULY 1, 2004, REQUIRING THEM TO ADVISE THE COURT WHAT THE PROPER PROCEDURE SHOULD BE IN RESPONSE TO PETITIONER'S AFFIDAVIT OF FEBRUARY 6, 2004. PETITIONER-JONES RESPONDED PRO SE, ON JUNE 11, 2004, CLARIFYING HIS REASONS & POSITION AS IT PERTAINED TO THE AFFIDAVIT OF FEBRUARY 6, 2004. PER THIS HONORABLE COURT'S COMMUNICATION ON JUNE 18, 2004 [IN RESPONSE TO PETITIONER-JONES' COMMUNICATION OF JUNE 11, 2004] THERE WAS AN INSTRUCTION TO COUNSEL TO CONSIDER THE MATTERS PETITIONER RAISED, AND DETERMINE IF THEY CAN PROPERLY BE INCLUDED IN THE MOTION FOR EVIDENTIARY HEARING... NOTWITHSTANDING THE COURT'S INSTRUCTION ON JUNE 18, 2004, COUNSEL AND RESPONDENT SUBMITTED A MOTION FOR A HEARING REGARDING THE SAID AFFIDAVIT OF 2/06/04. IN RESPONSE TO PETITIONER-JONES' APPOINTED COUNSEL AND RESPONDENT'S INAPPROPRIATE & COORDINATED SUBMISSION OF MOTIONS FOR A HEARING CONCERNING THE SAID AFFIDAVIT, PETITIONER-JONES SUBMITTED A PRO SE MOTION [ON JULY 8, 2004] CLARIFYING & EXPLAINING THE ISSUE, AND FURTHER EXPRESSED HIS WISH TO WITHDRAW THE AFFIDAVIT OF FEBRUARY 6, 2004. THEREINAFTER, PETITIONER-ELWOOD H. JONES JR. PROCEEDED TO MOVE FORWARD, PRO

SE, RESPECTFULLY SEEKING TO PROVIDE THIS HONORABLE COURT WITH AN OTHERWISE CLEAR RECORD OF THAT WHICH IS RELEVANT AND NECESSARY TO ACCORD PETITIONER-JONES THE RELIEF THAT HE IS THEREBY DUE.

PETITIONER-JONES SUBMITS THIS RESPONSE, PRO SE, MERELY TO MAINTAIN CLARIFICATION OF THE RECORD AND THE STATUS OF PROCEEDINGS IN HIS CASE. AS WELL, PETITIONER-JONES RESPECTFULLY POINTS OUT BUT YET ANOTHER EXAMPLE OF THE ONGOING LACK OF COMMUNICATION & UNPROFESSIONALISM OF APPOINTED COUNSEL.

RESPECTFULLY SUBMITTED,


ELWOOD H. JONES JR.
#339-441 #2 HSE 2050
P.O. BOX 788
MANSFIELD, OHIO 44901-0788

CC: ASSISTANT ATTORNEY GENERAL HEATHER GOSSELIN;
JAMES OWEN;
GREGORY MEYERS

ENCLOSURES:

COPY OF LETTER WRITTEN TO CLERK OF COURTS;
AND COPY OF RESPONSE & RECEIPT FOR PAYMENT
OF RESPONDENT'S MOTION.

11/01/04

RECEIVED

SEP 20 2004

JAMES BONINI, CLERK
DAYTON, OHIO

Mr. E. J. Jones Jr.
#339-441 #2-7/20050
P.O. Box 788
Mansfield, Ohio 44901
9/17/04

Clerk's Office of the
District Court of the United States
Southern District of Ohio
300 3rd Street Unit 713
Dayton, Ohio 45402

Dear Sir

My name is Elwood J. Jones Jr. I am the petitioner
in the above "Captioned Case" Case No C-1-01-564
before District Judge Thomas M. Rose Jr., Magistrate
Judge Meag.

I am writing requesting some information & the cost
& postage ... to receive a copy of any Motions &
Petition file on behalf of, against said petition by counsel
Heegarty Meyers & Jones, Owen & persistent attorney
Attorney General Heather Hosselin starting from July
3, 2004 until September 17, 2004.

Sir I need this information so I can have a check
made out for the amount & copy the material & postage
if such Motion or Petition has been filed.

Thank you for your time

Sincerely

Elwood J. Jones Jr.

Mon Oct 25 16:00:39 2004

OFFICE OF THE CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

UNITED STATES DISTRICT COURT

DAYTON, OH

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DO Code Div No Acct
4661 3 322350 I-441

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COPY WORK;SP

ELWOOD JONES

... Jones v. Bagley Case #: 1:01cv564

September 22, 2004

200 W. SECOND STREET
DAYTON, OHIO 45402

(937) 512-1400

Me Bonini. I have already received
 copies of Document # * 48 50 51 53
 # 53, should also be shown, attached
 Exhibit # A, H,

Mr. Jones:

Per your letter dated 9/17/04 requesting cost for copywork and postage, please see below:

Document	No. of pages
#48 filed 07/01/2004	7
#49 filed 07/12/2004	1
#50 filed 07/12/2004	4
#51 filed 07/22/2004	8
#52 filed 08/12/2004	3
#53 filed 08/31/2004	7 Main document
Exhibit A	8
Exhibit B	6
Exhibit C	3
Exhibit D	6
Exhibit E	2

55 @ .50 per page ~~\$27.50~~
 Approximate postage ~~2.50~~

~~\$30.00~~
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Please forward a money order for the amount shown and we will print and send the documents above.

JAMES BONINI/bac

Encl.

Mr. Bonini I am remitting a \$250 money order
 Requesting a copy of Document # # 49 filed
 7/12/04 1, page # 52 filed 3/12/04 3, page # 4 & ~~5~~
 address stamp ~~myself~~ " 50¢ for postage

[REDACTED]

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ELWOOD JONES, JR. :

Petitioner, : CASE NO. C-1-01-564

v. : JUDGE THOMAS M. ROSE

MARGARET BAGLEY, WARDEN : MAGISTRATE JUDGE MERZ

Respondent. :

WARDEN'S OPPOSITION TO ELWOOD JONES PRO SE SUPPLEMENTAL BRIEF

Respectfully submitted,

JIM PETRO
Ohio Attorney General

s/ Heather L. Gosselin
HEATHER L. GOSSELIN (0072467)
Deputy Attorney General
Capital Crimes Section
30 East Broad Street, 23rd Floor
Columbus, Ohio 43215-3428
Phone: (614) 728-7055
Fax: (614) 728-8600

COUNSEL FOR RESPONDENT

On May 14, 2004, Magistrate Judge Merz received a letter from Petitioner Elwood Jones (hereinafter "Jones"). In that letter, Jones requested that the Court file his February 6, 2004 affidavit. By Order issued July 3, 2004, this Court ordered the parties to "file with the Court counsel's positions on the manner in which the Court should handle the Pro Se Affidavit" on or before July 1, 2004. The parties have submitted their briefs. Both parties requested that the parties bring Petitioner and all counsel to Court to discuss the issue and question Jones regarding his desires. The parties are currently awaiting further direction from this Court.

In the meantime, Petitioner has filed some additional pro se documents. It appears from these documents that Jones is now moving to withdraw his February 6, 2004 affidavit and instead apparently requests that this Court grant him an evidentiary hearing. The Warden submits this pleading merely to place on the record her desire to contest any motion for evidentiary hearing. In light of the unique posture of this case, the Warden will await further order from this Court before briefing the issue of whether or not Jones meets the requirements for an evidentiary hearing. The Warden merely files this opposition now, in an abundance of caution, to defend against any future arguments that the Warden has waived her right to contest an evidentiary hearing.

Respectfully submitted,

JIM PETRO
Ohio Attorney General

s/ Heather L. Gosselin
HEATHER L. GOSSELIN (0072467)
Deputy Attorney General
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30 East Broad Street, 23rd Floor
Columbus, Ohio 43215-3428
Phone: (614) 728-7055
Fax: (614) 728-8600
COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Warden's Opposition to Elwood Jones Pro Se Supplemental Brief* has been delivered to Gregory Meyers, Ohio Public Defender's Office, 8 East Long Street, 11th Floor, Columbus, Ohio 43215-0587 and James David Owen, 5354 North High Street, Suite 3D, Columbus, Ohio 43214, via this Court's electronic filing system on this the 12th day of August 2004, and upon Petitioner Elwood Jones by placing a copy in regular U.S. mail to Elwood Jones, #339-441, #2-House 2050, P.O. Box 788, Mansfield Correctional Institution, Mansfield, Ohio 44901 on the 13th day of August 2004.

s/ Heather L. Gosselin
HEATHER L. GOSSELIN (0072467)
Deputy Attorney General